

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION**

JANICHOLAS VANKEITH SCOTT # L1786

PLAINTIFF

VERSUS

CIVIL ACTION NO. 5:18-cv-44-MTP

MANAGEMENT TRAINING CORPORATION, et al.

DEFENDANTS

ORDER

THIS MATTER is before the Court on Plaintiff's Motion for Declaration for Entry of Default [61], which the Court construes as a motion to compel discovery. Having carefully considered the Motion, the Court finds that it should be denied.

Plaintiff asserts that Defendants have not produced (1) photos or videos of his cell, (2) his housing record, (3) any record of removal or cleaning of mold in his cell. The Court notes that Plaintiff dated this Motion November 10, 2018 and Defendant MTC, Defendant Fleming, Defendant Grinnell, and Defendant Jackson filed a Notice on November 21, 2018 representing that Plaintiff's institutional records, including his housing history, had been provided to him. *See* Notice [57]. The only documents that Defendants have not produced to Plaintiff are photos or videos of his cell and records of mold removal or cleaning in his cell.

Defendants state they do not have photos or videos of Plaintiff's cell, and they do not possess any records concerning mold removal or cleaning in Plaintiff's cell. *See* Notice [51], Notice [57]. Production of these documents cannot be compelled because Defendants cannot produce something they do not have in their possession or control. *Bencel v. Salas*, 2018 WL 691649, at *3 (E.D. La. 2018); *see also* Fed. R. Civ. P. 34(a)(1) which requires the things to be produced be in the responding party's "possession, custody, or control."

IT IS, THEREFORE, ORDERED that Plaintiff's Motion for Declaration of Entry of Default [61] is DENIED.

SO ORDERED, this the 28th day of November, 2018.

/s/Michael T. Parker

United States Magistrate Judge